

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

NOTICE OF PROPOSED ADOPTION OF ADMINISTRATIVE ORDER 08-01, CASE MANAGEMENT/ELECTRONIC CASE FILING SYSTEM

PLEASE TAKE NOTICE that the Court intends to adopt Proposed Administrative Order 08-01, Case Management/Electronic Case Filing System. The Proposed Administrative Order adopts the Case Management/Electronic Case Filing System (CM/ECF) for use in all Fourth Circuit cases with the exception of administrative matters such as attorney disciplinary actions and judicial complaints.

The Administrative Order provides that documents filed by counsel after June 1, 2008, must be filed electronically using CM/ECF, with the following exceptions:

1. Case-initiating documents (such as petitions for review, mandamus, or permission to appeal) are filed in paper form.
2. Appendices are filed in paper form.
3. Formal briefs are filed in both electronic and paper form.
4. Documents exceeding size limitations to be set by the Court are filed in paper form.
5. Criminal Justice Act and other vouchers are filed in paper form.

An attorney may move for an exemption from electronic filing requirements for good cause shown. Pro se litigants are not required to file electronically but may request permission to file documents using CM/ECF in individual cases.

When a registered CM/ECF user files a document electronically, the document is deemed filed on the date and time stated on the Notice of Docket Activity generated by CM/ECF. The Notice of Docket Activity also constitutes service of the filed document on registered CM/ECF users in the case. Conventional service must be made on parties and attorneys who are not registered users. Counsel must also use conventional service for documents (such as sealed and paper filings) that cannot be served electronically. Sealed documents are filed electronically using special entries that automatically restrict electronic access to the Court, and the public version of the document is filed using the standard document filing events. Counsel and parties are responsible for redacting personal data identifiers and other sensitive information from public documents prior to filing.

The Proposed Administrative Order will take effect on April 1, 2008, subject to amendment in light of comments received. The CM/ECF System will be available for voluntary electronic filing by counsel effective April 1, 2008, with electronic filing by counsel becoming mandatory on June 1, 2008. Interested parties may submit comments on or before March 14, 2008, to:

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 E. Main Street, Suite 501
Richmond, Virginia 23219

February 6, 2008

/s/ Patricia S. Connor

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Administrative Order 08-01, Case Management/Electronic Case Filing System

The United States Court of Appeals for the Fourth Circuit adopts the following provisions to govern the filing of documents in cases before the Court. These provisions may be amended from time to time, with or without prior notice, by further order of the Court. The Court may deviate from these procedures in specific cases if deemed appropriate in the exercise of its discretion.

Rule 1 – Scope of Electronic Filing

(a) Except as otherwise prescribed by local rule or order, all cases filed in the U.S. Court of Appeals for the Fourth Circuit are assigned to the Court's Case Management/Electronic Case Filing System (CM/ECF). Administrative matters, including attorney disciplinary actions and judicial complaints, are not assigned to CM/ECF.

(b) Except as otherwise prescribed by local rule or order, all forms, briefs, motions, responses, notices, petitions for rehearing, bills of cost, and other documents filed by counsel after June 1, 2008, must be filed electronically using CM/ECF, with the exception of those listed below:

(i) Documents initiating cases in the court of appeals (such as petitions for review, applications for enforcement, petitions for permission to appeal, petitions for mandamus or prohibition, and motions to authorize successive post-conviction petitions) must be filed in paper form with the appropriate number of paper copies, rather than electronically. Upon the Court's request, the filer must promptly provide the clerk with an identical electronic text version in Portable Document Format (text PDF).

(ii) Appendices to briefs must be filed in paper form with the appropriate number of paper copies, rather than electronically.

(iii) Documents exceeding size limitations set by the Court for electronic files must be filed in paper form with the appropriate number of paper copies, together with an electronic notice of paper filing.

(iv) Criminal Justice Act vouchers and other documents relating to compensation and reimbursement for representation and for ancillary services and expenses must be filed in paper form, rather than electronically; these documents are maintained by the Court as financial documents separate from the docket.

(c) If a document is filed electronically, paper copies are not required, with the exception of formal briefs. Formal briefs must be filed electronically, and counsel must file and serve the paper copies required by local rule. The Court may request paper copies of other electronically filed documents as needed, and the filer must promptly file the requested copies.

(d) Upon motion and a showing of good cause, the Court may exempt counsel from the provisions of this Rule and authorize filing by means other than use of CM/ECF.

(e) Any document filed by a pro se litigant is not required to be filed electronically, though a pro se litigant may request permission to file documents electronically in an individual case.

(f) Documents must be filed in electronic text Portable Document Format unless the text PDF document is unavailable, in which case the document may be filed in scanned image Portable Document Format.

Rule 2 – Eligibility, Registration, Passwords

(a) Attorneys who intend to practice in this Court should register as Filing Users of the Court's CM/ECF system.

(b) If permitted by the Court, a party to a pending civil case who is not represented by an attorney may register as a Filing User of the Court's CM/ECF system solely for purposes of that case. A pro se party's Filing User status will be terminated upon termination of the case or termination of the party's pro se status.

(c) Completion of the Fourth Circuit CM/ECF Filer Registration constitutes consent to electronic service of all documents as provided in these rules and the Federal Rules of Appellate Procedure.

(d) Filing Users agree to protect the security of their passwords and immediately notify the PACER Service Center and the clerk if they learn that their password has been compromised. Filing Users may be sanctioned for failure to comply with this provision.

(e) A Filing User may withdraw from participation in CM/ECF by providing the clerk with written notice of the withdrawal. A Filing User's withdrawal from participation in CM/ECF does not alter the requirement that documents be filed in compliance with Rule 1.

Rule 3 – Consequences of Electronic Filing

(a) Electronic transmission of a document to CM/ECF consistent with these rules, together with the transmission of a Notice of Docket Activity from the Court, constitutes filing of the document under the Federal Rules of Appellate Procedure and the Court's local rules and constitutes entry of the document on the docket kept by the clerk under FRAP 36 and 45(b).

(b) If an extension of time or leave of Court is required to file a document, a Filing User should file the motion to extend filing time or other appropriate motion using the motion event and the underlying document using the document event. If the Court denies the motion, it will strike the underlying document. If the Court grants the motion, the underlying document will remain on the docket.

(c) Before filing a document with the Court, a Filing User must verify its legibility and completeness. When a document has been filed electronically, the official record is the electronic document stored by the Court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 1, a document filed

electronically is deemed filed at the date and time stated on the Notice of Docket Activity from the Court.

(d) Unless otherwise directed by the Court, filing must be completed before midnight Eastern Time, as shown on the Notice of Docket Activity, to be considered timely filed that day.

Rule 4 – Service of Documents by Electronic Means

(a) The Notice of Docket Activity that is generated by the Court’s electronic filing system constitutes service of the filed document on any registered CM/ECF Users. Parties who are not registered for electronic service through CM/ECF must be served conventionally with a copy of any document filed electronically in accordance with the Federal Rules of Appellate Procedure and the Court’s local rules.

(b) If a document (such as a sealed document or paper filing) cannot be served electronically, the filer must serve the document conventionally in accordance with the Federal Rules of Appellate Procedure and the Court’s local rules.

(c) The Notice of Docket Activity generated by the Court’s electronic filing system does not replace the certificate of service required by FRAP 25.

Rule 5 – Entry of Court-Issued Documents

(a) Except as otherwise provided by local rule or Court order, all orders, decrees, opinions, judgments, and proceedings of the Court relating to cases filed and maintained in the CM/ECF system will be filed electronically in accordance with these rules, which will constitute entry on the docket kept by the clerk under FRAP 36 and 45(b).

(b) Any order or other court-issued document filed electronically without the original signature of a judge or authorized court personnel has the same force and effect as if the judge or clerk had signed a paper copy of the order.

Rule 6 – Attachments and Exhibits to Motions and Original Proceedings

(a) Unless the Court permits or requires traditional paper filing, Filing Users must submit in electronic form all documents referenced as exhibits or attachments.

(b) Whenever possible, exhibits and attachments must be in text rather than scanned image PDF format and should be excerpted to include only such portions of the materials as are germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. The Court may require parties to file additional excerpts or the complete document.

Rule 7 – Sealed Documents

(a) Sealed material must be filed in accordance with Local Rule 25(c), which requires prominently marking the material as SEALED and filing it with a certificate of confidentiality or a motion to seal.

(b) Sealed material must be filed using a specific entry--SEALED BRIEF FILED or SEALED DOCUMENT FILED--that automatically limits electronic document access to the Court. Since electronic access to sealed documents is restricted to the Court, sealed documents must be served conventionally in accordance with the Federal Rules of Appellate Procedure and the Court's local rules.

Rule 8 – Retention Requirements

(a) Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User for a period of three years after issuance of the Court's final mandate in the case.

(b) On request of the Court, the Filing User must provide original documents for review.

Rule 9 – Signatures

(a) The user log-in and password required to submit documents to the CM/ECF system serve as the Filing user's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Appellate Procedure, the Court's local rules, and any other purpose for which a signature is required in connection with proceedings before the Court.

(b) The name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

(c) No Filing User or other person may knowingly permit or cause to permit a Filing User's log-in and password to be used by anyone other than an authorized agent of the Filing User.

(d) Documents requiring signatures of more than one party must be electronically filed either by:

(i) submitting a scanned document containing all necessary signatures;

(ii) representing the consent of the other parties on the document;

(iii) identifying on the document the parties whose signatures are required and submitting a notice of endorsement by the other parties no later than three business days after filing; or

(iv) any other manner approved by the Court.

(e) Electronically represented signatures of all parties and Filing Users as described above are presumed to be valid signatures. If any party, counsel of record, or Filing User objects to the representation of his or her signature on an electronic document as described above, he or she must, within 10 calendar days, file a notice setting forth the basis of the objection.

Rule 10 – Notice of Court Orders and Judgments

(a) Immediately upon the entry of an order, judgment, or opinion in a case assigned to CM/ECF, the clerk will electronically transmit a Notice of Docket Activity to Filing Users in the case. Electronic transmission of the Notice of Docket Activity constitutes the notice and service required by FRAP 36(b) and 45(c).

(b) The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Appellate Procedure.

Rule 11 – Technical Failures

A party or attorney who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the Court.

Rule 12 – Public Access

(a) Parties must refrain from including or redact the following personal data identifiers from documents filed with the Court whenever such redaction is required by FRAP 25(a)(5):

(i) **Social security numbers.** If an individual's Social Security number must be included, only the last four digits of that number should be used.

(ii) **Names of minor children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.

(iii) **Dates of birth.** If an individual's date of birth must be included, only the year should be used.

(iv). **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.

(v). **Home addresses.** In criminal cases, if a home address must be included, only the city and state should be listed.

(b) The responsibility for redacting these personal data identifiers rests solely with counsel and the parties. The clerk will not review each pleading for compliance with this rule.

(c) In accordance with FRAP 25(a)(5) and Rule 5.2(c) of the Federal Rules of Civil Procedure, remote public access to electronic documents in immigration and social security cases is limited to the Court's orders and opinions. Remote electronic access to other documents in immigration and social security cases is available only to parties and attorneys in the case who have registered through CM/ECF.

Rule 13 – Hyperlinks

(a) Electronically filed documents may contain the following types of hyperlinks:

- (i) Hyperlinks to other portions of the same document or to other documents filed on appeal;
- (ii) Hyperlinks to documents filed in the lower court that are part of the record on appeal; and
- (iii) Hyperlinks to statutes, rules, regulations, and opinions.

(b) Hyperlinks do not replace citations to the appendix, record, or legal authority. Documents must contain standard citations in support of statements of fact or points of law, in addition to any hyperlink. Hyperlinks are simply mechanisms for accessing material cited in a filed document and are not considered part of the appellate record. The Court accepts no responsibility for the availability or functionality of any hyperlink and does not endorse any organization, product, or content at any hyperlinked site.